



Sharpen your EDDE Skills at the  
**Information Governance,  
Electronic Discovery and  
Digital Evidence National  
Institute**

January 28-31, 2014  
Stetson University College of Law/  
Tampa Law Center  
Tampa, FL



# Information Governance, Electronic Discovery and Digital Evidence National Institute

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The ABA Section of Science & Technology Law is pleased to invite you to the 2014 ABA Information Governance, Electronic Discovery and Digital Evidence National Institute held at Stetson's Tampa Law Center in Tampa, Florida, on January 28-31, 2014.

An organization that manages its information assets properly—knowing what data they hold, the sensitivity of that data, how they present it (e.g. global social media), and where they are storing it (e.g. the cloud)—is able to leverage the benefits of these assets, manage the risks, and respond to discovery production requests quickly, economically, and accurately. This thorough management of information, called information governance (IG), enables an organization to reduce storage cost, understand what data needs to be protected, and comply with laws and regulations. The aspects of IG dealing with dispute resolution are called electronic discovery and digital evidence (EDDE).

In-house and retained counsel who need to acquire or sharpen their skills in EDDE will hear the current thought on the handling of electronically stored information (ESI), including descriptions and interpretations of judicial decisions. They will learn approaches they can take back and immediately apply in their practice. Executives and other litigation stakeholders from public and private organizations, large and small, will also gain invaluable insights on how best to prepare their technical staff and information systems to respond to requests for ESI. This workshop is addressed to intermediate and advanced ESI litigation practitioners and to those who are responsible for an organization's IG, including the systems creating ESI. The workshop will cover ESI issues for a variety of business sectors including the HIPAA HITECH requirements that mandate an enhanced standard of care for the parties producing and receiving Electronic health records (EHR).

The faculty is an eclectic mix of judges who are well known for their decisions that are establishing the precedents for the handling of ESI as evidence, legal practitioners who are experienced and knowledgeable on both the promises and pitfalls of using ESI, technologists who are shaping the environment in which ESI is created, and forensics experts who are experienced at ferreting out relevant digital evidence.

The curriculum consists of case studies, a mock 26(f) meet-and-confer, a mock hearing on issues of production and spoliation of information from social media and from employee-owned devices, and panel discussions with luminaries in the field. Judges and experienced practitioners will analyze recent judicial decisions on the production of ESI and the key rules from the Federal Rules of Civil Procedure that impact e-discovery. Legal experts and researchers will describe how technology-assisted review can lead to cost efficient, yet defensible, automated production of relevant ESI; practitioners and technologists will examine the e-discovery implications of the increasing use of employee-owned devices aka BYOD, encryption, social media, and data stored in the cloud; and forensics experts will describe how to extract information from those

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increasingly complex systems. Finally, technologists will discuss the plan to place these various elements of e-discovery within an ISO 9001 framework of quality standards and practices.

The resulting synergy will give the attendees an understanding of how the handling of ESI has evolved and will present a hopeful prognosis that expected improvements will provide cost efficient, but defensible, management of ESI. Attendees will be given ample opportunity to ask questions during the workshop. There will also be plenty of time for networking with the faculty and other attendees.

This unique blend of faculty, case studies, analysis of judicial decisions, clear explanation of where technology is and where it is going, and informative yet entertaining mock hearings presented in a three-day package, offering an experience matched by no other conference. This is a one-of-a-kind program you will not want to miss.

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# Faculty

## Jason R. Baron

Of Counsel  
*Drinker Biddle & Reath LLP*  
Washington, DC

## Bennett B. Borden\*

Chair, Partner  
Information Governance and  
E-Discovery Group  
*Drinker Biddle & Reath LLP*  
Washington, DC

## Julia Brickell Esq.

Executive Managing Director  
and General Counsel  
*H5*  
New York, NY

## Chad P. Brouillard

Attorney  
*Foster & Eldridge LLP*  
Cambridge, MA

## Joseph M. Burton

Managing Partner  
*Duane Morris, LLP*  
San Francisco, CA

## Donna M. Chesteen, Esquire

Founding Member  
*The Tech Law Firm*  
Orlando, FL

## Susan Demers, Ph.D., J.D.

Dean  
College of Ethics & Legal  
Studies  
*St. Petersburg College*  
Clearwater, FL

## Hon. John M. Facciola

U.S. Magistrate Judge  
*U.S. District Court*  
*District of Columbia*  
Washington, DC

## Reed D. Gelzer, M.D.

*Trustworthy EHR, LLC*  
Newbury, NH and  
Philadelphia, PA

## William F. Hamilton

Partner  
*Quarles & Brady LLP*  
Tampa, FL

## Prof. Carol Henderson

Professor of Law and  
Director  
National Clearinghouse for  
Science, Technology and the  
Law  
*Stetson University College*  
*of Law*  
Gulfport, FL

## Eric Hibbard\*

CTO Security and Privacy  
*Hitachi Data Systems*  
Santa Clara, CA

## Leigh Isaacs, CIP, ERM, ECM

Director  
Records & Information  
Governance  
*Orrick, Herrington & Sutcliffe*  
Washington, DC

## Serge Jorgensen\*

President  
*The Sylint Group*  
Sarasota, FL

## Hoyt L. Kesterson II\*

Senior Security Architect  
*Terra Verde Services*  
Scottsdale, AZ

## Ross Koppel, Ph.D.

Adjunct Professor of  
Sociology  
*University of Pennsylvania*  
Philadelphia, PA

## Larry H. Kunin

Partner  
*Morris, Manning & Martin LLP*  
Atlanta, GA

## Erik Laykin

Managing Director  
*Duff & Phelps*  
Los Angeles, CA

## Samuel A. Lewis

Member  
*Feldman Gale*  
Miami, FL

## Rakesh Madhava

CEO  
*Nextpoint*  
Chicago, IL

## Prof. Richard Marcus

Chair in Litigation  
University of California  
*Hastings College of Law*  
San Francisco, CA

## Tatiana Melnik

Attorney  
*Melnik Legal PLLC*  
Tampa, FL

## Hon. Andrew J. Peck

U.S. Magistrate  
U.S. District Court  
*Southern District of*  
*New York*  
New York, NY

## Hon. Anthony E. Porcelli

U.S. Magistrate Judge  
U.S. District Court  
*Middle District of Florida*  
Tampa, FL

## Hon. Shira A. Scheindlin

U.S. District Court  
*Southern District of New*  
*York*  
New York, NY

## Warwick Sharp

Vice President, Marketing  
and Business Development  
*Equivio*  
Rosh Haayin, Israel

## Ronni D. Solomon

Partner  
*King & Spalding*  
Atlanta, GA

## Jon C. Stanley

Attorney  
*Law Office of Jon Stanley*  
Cape Elizabeth, ME

## Jason Stead

Chief Security Officer  
Information Security  
*Choice Hotels*  
*International, Inc.*  
Scottsdale, AZ

## Steven W. Teppler\*

Partner  
*Kirk-Pinkerton*  
Sarasota, FL

## Robert Thibadeau

Senior Vice President and  
Chief Scientist  
*Wave Systems*  
Pittsburgh, PA

## Lucy L. Thomson\*

Principal  
*Livingston PLLC*  
Washington, DC

## Lauren Topelsohn, Esq.

*Mandelbaum, Salsburg,*  
*Lazris & Discenza, P.C.*  
West Orange, NJ and  
New York, NY

# Agenda

## Day 1: Tuesday, January 28, 2014

### Noon -1:00 p.m. - Registration

### 1:00 - 3:00 p.m. - Information Technology 101 - Part I

Bennett B. Borden, Hon. John M. Facciola, Eric Hibbard

Moderator: Hoyt L. Kesterson II

This half-day session is an optional precursor to the two and a half days on electronic discovery and governance. This session is for those who want to sharpen their understanding of the technical environment that added the e to discovery. The session will cover hardware such computers (normal, virtual, and portable) and different types of storage; what runs on that hardware such as operating systems and applications; how these things communicate with each other across a network; how data is protected when stored or transmitted; elements of an information system such as servers and firewalls, databases and backups; relationships such as web browser and server; enterprise and 3rd parties such as cloud service providers; and how all of these shape and constrain legal disputes involving electronically stored information.

This session will cover basic concepts for those who are entering the field while also covering elements, e.g. encryption, for those who want to broaden their knowledge.

### 3:00 - 3:30 p.m. - Break

### 3:30 - 5:15 p.m. - Information Technology 101 - Part II

## Day 2: Wednesday, January 29, 2014

### 8:00 - 9:00 a.m. -Registration & Breakfast

### 8:45 - 9:00 a.m. - Welcome by Program Chairs

### 9:00 - 10:00 a.m. - Information Governance as a Framework for Handling Data—Big and Small—and e-Discovery

Leigh Isaacs, Jason Stead

Moderator: Bennett B. Borden

Information governance is your plan for managing your information assets properly—knowing what data you hold and the sensitivity of that data: how you present it (e.g., social media, twitter), and how and where you are storing it (tablets and smart phones, the cloud, big data). A proper IG plan enables your organization to reduce storage cost, understand what data needs to be protected, comply with laws and regulations, and respond to discovery production requests quickly, economically, and accurately. Panelists will describe elements of IG, including processes and tools to put it in place, with an emphasis on supporting e-discovery.

### 10:00 - 10:30 a.m. - Break

### 10:30 - 11:30 a.m. - Cloud and Social Media Collection and Analysis

Eric Hibbard, Rakesh Madhava, Ronni D. Solomon

Moderator: Bennett B. Borden

Social media is one of the fastest growing communication methods for companies, both internally and externally, and can have significant benefits. But it can also bring serious legal risks. In this session we will discuss some of these legal challenges and how to best address them. We will also discuss the unique challenges social media can pose in e-discovery and how they can be addressed. Finally, we will present technological solutions for social media to assist in identifying, preserving, collecting, reviewing and producing social media.

### 11:30 - 1:00 p.m. - Lunch

EDDE chairs interact with attendees:

- Welcome by immediate past chair of the Section for Science & Technology Law, Lucy L. Thomson
- Welcome by Stetson Dean
- Welcome by representatives of the local bars

# Agenda (Cont'd.)

## **1:00 – 2:30 p.m. – Digital Forensics in the Cloud and on Mobile Devices plus a Discussion on the Role of Forensics Training**

Joseph M. Burton, Prof. Carol Henderson, Hon. Anthony E. Porcelli

Moderator: Serge Jorgensen

Beginning with a live demonstration of a forensics examination of a smartphone, the panel will discuss the challenges of forensics in the cloud and on mobile devices especially if both private and discoverable information reside on the same device. The panel will then turn to a discussion on the expertise an attorney should seek for extracting data and/or determining the probative value of that data. An overturned NC decision declared that only a person trained and certified in forensics is permitted to opine on the interpretation of forensically extracted data. Perhaps the role should be split into the extraction of data and the analysis of data, where the latter doesn't require forensics training or certification for an individual performing only analysis.

## **2:30 – 3:00 p.m. – Break**

## **3:00 – 4:00 p.m. – Managing ESI within Health Information Systems—Now They've Gone Mobile**

Chad R. Brouillard, Ross Koppel, Tatiana Melnik

Moderator: Reed D. Gelzer

Relative latecomers to computerized records, electronic health record systems (EHRs) remain proprietary and risk-laden. Records management functions considered requirements in other industries are often lacking. EHRs are rarely designed for integrity or evidentiary inquiries, much less configured, tested, implemented, and/or operated for assuring trustworthy ESI. The rapid expansion of telemedicine, home-based and patient-worn medicating and monitoring remote systems expands variability and risk. These records may, unknown to users, provide overly revealing detail or, at the other extreme, only approximations or even corruptions of information, thus providing unique challenges in supporting legal proceedings.

## **4:00 – 4:30 p.m. – Break**

## **4:30 – 6:00 p.m. – Relevant ESI Here, There, and Everywhere—A Mock 26(f) Meet-and-Confer and 16(b) Hearing**

Donna M. Chesteen, Hon. John M. Facciola, Larry H. Kunin, Serge Jorgensen, Hon. Andrew J. Peck, Lauren Topelsohn

Moderator: Hoyt L. Kesterson II

The previous president of Gimble is accused of falsifying sales data leading Gyre to pay an inflated price for acquisition. Relevant information is in a variety of places—social media such as tweets and Facebook, laptops owned by the employee but used for business, a public cloud, tablets, and smartphones including text messages. These plus the traditional documents such as email impel the plaintiff to propose a scope of discovery that includes social media, the cloud, and mobile devices, including some that also hold personal data.

Attorneys and their technology experts will conduct an ESI-focused mock Fed. R. Civ. P. Rule 26(f) meet-and-confer. This session will illustrate the value of cooperation between the parties and demonstrate how disputes over electronic discovery (e.g., amount of data to be produced, native format, encrypted data, technology-assisted review or exhaustive visual examination, protection of produced sensitive data, privilege, and preservation) will be resolved through good faith negotiation. Thereafter, counsel, supported by their technology experts, will argue matters that are still in dispute before a mock Fed. R. Civ. P. Rule 16(b) hearing held before a U.S. magistrate judge. Attendees will receive unique insight into how best to prepare for and present the critical issues in these hearings.

## **Day 3: Thursday, January 30, 2014**

### **8:30 – 9:00 a.m. – Registration & Breakfast**

### **9:00 – 10:30 a.m. – Judicial View on Recent ESI Decisions**

Hon. John M. Facciola, Hon. Andrew J. Peck, Hon. Anthony Porcelli, Hon. Shira A. Scheindlin

Moderators: Jon C. Stanley, Steven W. Tepler

Do recent ESI decisions advance the general understanding of ESI or are they outliers? Are certain decisional authority trends developing? Will any decisions affect how organizations store and manage data, e.g., circuit split on use of the Computer Fraud and Abuse Act? How will mobile, especially employee-owned, devices affect the scope of discovery? These are some of the critical issues this panel will address.

### **10:30 – 11:00 a.m. – Break**

# Agenda (Cont'd.)

## 11:00 – 12:00 p.m. – Using Predictive Technologies to Address IG Problems

Bennett B. Borden, William F. Hamilton, Leigh Isaacs

Moderator: Jason R. Baron

The recent judicial acceptance of predictive technologies in the e-discovery space has represented a watershed moment for the legal profession. Beyond litigation and especially with the volume of electronically stored information (ESI) continuing to grow exponentially, the use of sophisticated predictive technologies to manage information also represents a key element in an overall IG strategy for organizations to consider. This session will provide insights on how the innovative uses of such methods in both the private and public sectors hold the potential to transform IG practices.

## 12:30 – 2:00 p.m. – Lunch

Sponsored talk by Warwick Sharp, Vice President, Marketing and Business Development of *Equivio*, Israel

## 2:00 – 3:00 p.m. – Standardizing E-Discovery—status of and discussion on the international effort

Jason R. Baron, Julia Brickell

Moderator: Eric Hibbard

Standardizing electronic discovery has moved from an academic discussion to a real possibility. The International Organization for Standardization / International Electrotechnical Commission (ISO/IEC) Joint Technical Committee (JTC) 1, Information Technology, began work on an International Standard. Work began on the new standard, ISO/IEC 27050, Information technology - Security techniques - Electronic discovery, in May 2013. They intend to produce a multi-part standard—overview and concepts (Part 1), guidance for governance and management (Part 2), a code of practice (Part 3), and ICT readiness (Part 4). This panel will provide an overview of the current ISO/IEC electronic discovery project and then, with the participation of the audience, explore possible directions the standard can and should go.

## 3:00 - 4:00 p.m. – A Discussion of the FRCP Amendment Proposals

Hon. John M. Facciola, Prof. Richard Marcus, Hon. Andrew J. Peck, Hon. Anthony E. Porcelli, Hon. Shira A. Scheindlin

Moderators: Jon C. Stanley, Lucy L. Thomson

In August 2013, a package of proposed amendments to the Federal Rules of Civil Procedure was published for public comment. The package contains a variety of features. One is a proposal to replace Rule 37(e) with a new rule on sanctions for failure to preserve information. Other features include a recalibration of the scope of discovery in Rule 26(b)(1), explicit inclusion of preservation in the Rule 16 scheduling order, and references to Fed. R. Evid. 502's provisions for agreements guarding against privilege waiver. Proposed amendments would also amend Rule 26(c) to provide explicit authority for a protective order allocating the costs of discovery. Others would revise provisions on the numerical limits for interrogatories and depositions. In addition, revisions to Rule 34 would require that objections to discovery requests be stated with specificity and state whether any responsive materials are actually being withheld on the basis of the objection. Rule 34 amendments would also direct that the responding party state when production will be completed. This panel of distinguished jurists and a Reporter of the Advisory Committee on Civil Rules will discuss the anticipated impact of the proposed changes if accepted.

## 4:00 – 4:30 p.m. – Break

## 4:30 – 6:00 p.m. – We Can Produce That File But It Cannot Be Read—A Mock Spoliation Hearing

Donna M. Chesteen, Serge Jorgensen, Larry H. Kunin, Hon. Andrew J. Peck, Hon. Shira A. Scheindlin, Lauren Topelsohn

Moderator: Hoyt L. Kesterson II

An examination of backup service in the cloud leads to a forensics examination of a BYOD laptop and a smartphone. A possibly significant file is found but it cannot be read; it's encrypted and the key is nowhere to be found. Plaintiff argues that it is the purposeful destruction of a significant piece of evidence. A mock spoliation hearing is conducted before a U.S. magistrate judge.



## 6:15 p.m. – Reception

## Day 4: Friday, January 31, 2014

## 8:30 – 9:00 a.m. – Registration & Breakfast

# Agenda (Cont'd.)

## **9:00 – 10:00 a.m. – Ethics—Competence and the Benefits and Risks of Technology**

Susan Demers, Erik Laykin, Samuel A. Lewis, Lucy L. Thomson

Moderator: Steven W. Teppler

Your client's sensitive information makes your law firm an attractive target for hackers. It's possible that a law firm's inability to protect electronic data entrusted to its care will be considered an ethics violation.

Rule 1.6 (c) on confidentiality of information states "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Comment 8 to Rule 1.1 on competence states "... a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology..."

The panelists will discuss what you should be doing to protect information entrusted to you, not only as an obligation to your clients but also to comply with the Model Rules of Professional Conduct.

## **10:00 a.m. – 10:30 a.m. – Break**

## **10:30 – 11:30 a.m. – Emerging Technologies—Demystifying Big Data: Is a Picture Still Worth a Thousand Words?**

Eric Hibbard, Erik Laykin, Robert Thibadeau

Moderator: Hoyt L. Kesterson II

Big Data—what's real and what's hype? Big data may pose interesting e-discovery possibilities, not from the amount of data to be traditionally searched but in the additional inferences a large amount of data could provide.

Images—it used to be hard spotting modifications to the original but there are now easily accessible tools that can spot shopped images.

The panel is a mix of attorneys and technologists in a session that looks at how new technology can affect e-discovery.

## **11:30 – 12:30 p.m. – Judicial Roundtable**

Hon. Andrew J. Peck, Hon. Anthony E. Porcelli, Hon. Shira A. Scheindlin

Moderator: Hon. John M. Facciola

Listen in on a discussion among the judges as each opines on where Information Governance and Electronic Discovery is heading. Attendees will learn the different jurisdictional approaches by listening to judges exchanging views, often differing, on the effects of new information technology, e.g. social media and cloud computing, and new methods on how to handle the rising tide of electronic documents, e.g. technology assisted review. Each Judge will describe how the attorneys appearing before them can please them when presenting digital evidence along with the description of how that evidence was collected and handled. Attendees will also hear what displeases them.

## **12:30 p.m. – Workshop adjourns**



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- Enroll me in the Science & Technology Law Section for \$50. **Enter your \$50 enrollment on line 4C.**

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